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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ROBERT McADAM,

12 Plaintiff,

13 v.

14 STATE NATIONAL INSURANCE
15 COMPANY, INC. and ROES 1 through
25, inclusive,

16 Defendants.

Case No. 12cv1333 BTM(MDD)

**ORDER RE: DIVERSITY
JURISDICTION**

17
18 On December 8, 2014, the Court sua sponte raised the issue whether the
19 Court has diversity jurisdiction over Plaintiff's claims to the extent that Plaintiff
20 is suing as an agent for McAdam's Fish LLC. On December 10, 2014, Plaintiff
21 filed briefs responding to the Court's concerns.

22 Upon reviewing the briefs and conducting its own research, the Court is
23 satisfied that it has diversity jurisdiction over the claims brought by Mr. McAdam
24 as an agent of McAdam's Fish LLC. Plaintiff admits that one of the members
25 of McAdam's Fish LLC is a citizen of Texas. Defendant State National
26 Insurance Company, Inc. is also a citizen of Texas. However, Plaintiff himself
27 is a citizen of California. Accordingly, whether diversity of citizenship exists
28 depends on whether the Court looks to the citizenship of Mr. McAdam or the
limited liability company.

1 Jurisdiction must rest only upon the citizenship of real and substantial
2 parties to the controversy. Navarro Sav. Ass'n v. Lee, 446 U.S. 458, 461
3 (1980). The citizenship of an agent “who merely sues on behalf of the real
4 parties must be ignored.” Associated Ins. Mgmt. Corp. v. Arkansas General
5 Agency, Inc., 149 F.3d 794, 796 (8th Cir. 1998). However, “a crucial distinction
6 must be made between a plaintiff who sues solely in his capacity as an agent,
7 on the one hand, and, on the other, a plaintiff who sues not only as an agent,
8 but also as an individual who has his own stake in the litigation.” Oscar Gruss
9 & Son, Inc. v. Hollander, 337 F.3d 186, 194 (2d Cir. 2003).

10 In Oscar Gruss & Son, the Second Circuit held that Oscar Gruss & Son,
11 Inc. (“OGSI”), which retained an 11.53% interest in the warrants that were the
12 subject of the lawsuit, was not “a mere conduit,” but, rather, possessed a valid
13 stake in the litigation sufficient to be considered a “real and substantial” party
14 for purposes of diversity jurisdiction. Id. at 194. Therefore, the Second Circuit
15 found that OGSI’s citizenship, not the citizenship of the six OGSI employees
16 to whom 88.47% of the warrants were assigned, determined whether diversity
17 of citizenship existed.

18 In addition to possessing a stake in the litigation sufficient to be
19 considered a “real and substantial party,” a bona fide representative “must have
20 actual powers with regard to the matter in litigation.” 13E Charles Alan Wright
21 et al., Federal Practice and Procedure § 3606, at 293 (3d ed. 2009). In Oscar
22 Gruss & Son, 337 F.3d at 195, OGSI and its former employees were parties to
23 an agreement which expressly gave OGSI the power to act on the employees’
24 behalf with regard to their rights in the warrants. The agreement vested in
25 OGSI the authority to commence litigation, engage attorneys, and make
26 decisions regarding how the employees’ rights would be enforced and
27 maintained. Therefore, “OGSI was clearly intended to be the ‘master of the
28 litigation.’” Id. See also Transcontinental Oil Corp. v. Trenton Prods. Co., 560

1 F.2d 94, 103 (2d Cir. 1977) (holding that plaintiff, who operated a syndicate
2 investment in stock on behalf of himself and eleven other investors, was master
3 of the litigation because, among other things, he had been the leader of the
4 syndicate since its inception, he was the syndicate member most familiar with
5 the matters in suit, and he negotiated and signed the agreement that gave rise
6 to claims in the suit).

7 Mr. McAdam has presented evidence that he has a substantial stake in
8 this litigation. Mr. McAdam invested over \$1.69 million in McAdam's Fish, LLC,
9 and has an approximately 22% interest in the company. (McAdam Decl. [Doc.
10 133-2], ¶¶ 15,16.) In addition, Mr. McAdam's livelihood is derived from his
11 salary operating the company. (*Id.* at ¶ 16.) Clearly, Mr. McAdam is more than
12 a mere conduit and has a legitimate stake in this lawsuit.

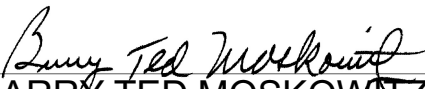
13 Furthermore, it appears that Mr. McAdam is the master of this litigation.
14 He is the sole managing member of McAdam's Fish LLC (McAdam Decl. ¶¶ 8,
15 9, 14), and under the Operating Agreement (Ex. A to Doc. 133), has "full,
16 complete, absolute and exclusive authority, power and discretion to manage
17 and control the business, Property and affairs of the Company, to make all
18 decisions regarding those matters and to perform any and all other acts or
19 activities customary or incident to the management of the Company's business
20 and affairs." Mr. McAdam obtained the insurance for the vessels (McAdam
21 Decl. ¶ 22) and is the person at McAdam's Fish LLC who is most familiar with
22 the facts underlying this suit. Mr. McAdam has been involved in the
23 prosecution of this case from the outset.

24 In sum, based on Mr. McAdam's significant financial interest in this lawsuit
25 and the fact that he is the master of this litigation, the Court concludes that Mr.
26 McAdam is a real and substantial party to the controversy. Therefore, Mr.
27 McAdam's citizenship, not the citizenship of the members of the limited liability
28 company, governs the determination of whether complete diversity exists.

1 Because Mr. McAdam is a citizen of California and State National is a citizen
2 of Texas, there is complete diversity. Therefore, to the extent Mr. McAdam is
3 suing as an agent for McAdam's Fish LLC, the Court has diversity jurisdiction
4 over those claims.

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6 **IT IS SO ORDERED.**

7 DATED: January 22, 2015

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9 BARRY TED MOSKOWITZ, Chief Judge
10 United States District Court
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